

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35294/35337

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 552
	)	
Plaintiff-Respondent,	)	Filed: July 29, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
SUSAN LYNN TERRY,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Ronald J. Wilper, District Judge.

Order revoking probation and ordering into execution previously imposed sentence, affirmed; judgment of conviction and consecutive indeterminate sentence of seven years, for possession of a controlled substance, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Heather M. Carlson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge, PERRY, Judge  
and GUTIERREZ, Judge

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PER CURIAM

Susan Lynn Terry was charged with and pled guilty to grand theft, I.C. §§ 18-2403(1), 18-2407(1)(b), in case number 35294, and was sentenced to a unified term of seven years, with two years determinate and the district court retained jurisdiction. After Terry completed her rider, the district court suspended the sentence and placed Terry on probation for seven years. Terry subsequently admitted violating the terms of her probation by committing new crimes. In case number 35337, Terry was charged with possession of a controlled substance, possession of drug paraphernalia and driving without privileges and, pursuant to a plea agreement, pled guilty to possession of a controlled substance, I.C. § 37-2732(c), and to misdemeanor driving without

privileges, I.C. § 18-8001(3). The cases were consolidated for purposes of sentencing. The district court revoked Terry's probation and ordered the underlying sentence into execution in case number 35294 and sentenced Terry to a consecutive indeterminate term of seven years for the possession charge and to 174 days of jail time for the misdemeanor driving without privileges charge in case number 35337. Terry filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Terry appeals from the revocation of her probation, from her judgment of conviction and from the denial of her Rule 35 motion, contending that the district court abused its discretion by revoking her probation in case number 35294, by imposing an excessive sentence in case number 35337 and by denying her Rule 35 motion.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 170 P.3d 387 (2007). When we review a sentence that is ordered into execution following a period of probation, we do not base our review upon the facts existing

when the sentence was imposed. Rather we examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *Adams*, 115 Idaho at 1055, 772 P.2d at 262; *State v. Grove*, 109 Idaho 372, 373, 707 P.2d 483, 484 (Ct. App. 1985); *State v. Tucker*, 103 Idaho 885, 888, 655 P.2d 92, 95 (Ct. App. 1982).

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007).

Applying the foregoing standards and having reviewed the record, we conclude that the district court did not abuse its discretion by revoking Terry's probation, by imposing sentence and by denying her Rule 35 motion for reduction of sentence. Accordingly, the order of the district court revoking Terry's probation in case number 35294 is affirmed as is the judgment of conviction and sentence in case number 35337 and the denial of her Rule 35 motion.